

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **March 25, 2003**

AGENDA ITEM NO.: 6

CONSENT: **X**

REGULAR:

CLOSED SESSION:

ACTION: **X**

INFORMATION:

(Confidential)

ITEM TITLE: **New Towne Subdivision Infrastructure Reimbursement, Section 5**

RECOMMENDATION: Approve the attached resolution authorizing approval of the request of Long Meadows, Inc. to implement the City's waterline reimbursement policy for the referenced project.

Customary subdivision reimbursements for sewer and street improvements would also apply to this project.

SUMMARY: Mr. Howard Mowry of Long Meadows, Inc. (LMI), the developer of the residential development, New Towne Subdivision Section 5, located off of McConville Road, is requesting approval from City Council to implement the City's "waterline reimbursement policy" for the referenced project. This policy states the City will reimburse the developer 100% of the cost of the waterline construction (up to \$38/lf) in return for certain concessions and agreements provided by the developer. A copy of the proposed agreement is attached for your review.

Staff has reviewed the request and determined this request is consistent with previous practices. LMI will also be eligible for the customary subdivision reimbursements such as: ½ the cost of the curb, gutter and sidewalk; developer installed water and sewer services; and additional roadway pavement design requested by the City (an interior street is being developed to "collector" specifications to be used in the future to serve other properties in the area.)

PRIOR ACTION(S):

Similar agreements for Section 1 of this Subdivision on February 2, 2000 and Sections 2 & 3 on June 6, 2000.
March 4, 2003 - Physical Development Committee Review of Section 5

FISCAL IMPACT: Funds for this work are available in the Capital Project Balance:

Project	Previously Appropriated	Previous Expend/ Encumbrances	Available Balance	Proposed Expenditure
Annual Water Petitions FY03	\$200,000	\$94,400	\$105,600	\$36,350
Annual Sewer Extensions FY03	\$500,000	\$37,459	\$462,541	\$14,400
General Street Improvements FY03	\$550,000	\$125,802	\$424,198	\$33,300

CONTACT(S):

Lee Newland, Director of Engineering
Bruce McNabb, Director of Public Works

847-1360 ext. 270
847-1362 ext. 268

ATTACHMENT(S):

Resolution
Maps
Agreement

REVIEWED BY: lkp

RESOLUTION

Whereas Long Meadows, Inc. (LMI), a Lynchburg business, has requested to be reimbursed for construction of infrastructure in New Towne Section 5 subdivision that is proposed to be constructed in accordance with the reimbursement agreement;

Now, Therefore, Be It Resolved that the Council of the City of Lynchburg, in accordance with City Code Sec. 39-27(i), does hereby authorize the City Manager to enter into an agreement with LMI to reimburse for the construction of the waterline in New Towne Section 5.

Adopted:

Certified:

Clerk of Council

064L

REIMBURSEMENT AGREEMENT-NEW TOWNE SECTION 5

THIS REIMBURSEMENT AGREEMENT (this "Agreement") is made as of this _____ day of _____ 2003 (the "Effective Date"), by and between Long Meadows, Inc., a Virginia Corporation and the CITY OF LYNCHBURG, a municipal corporation of the Commonwealth of Virginia the ("City").

Recitals

A. Section 39-27(i) of the Code of Ordinances of the City of Lynchburg, Virginia (the "Code") provides, in relevant part, that the City may enter into a special agreement with a subdivision developer who has made certain commitments for the development of streets, recreational facilities and affordable housing within its subdivision. Specifically, section 39-27(i) of the Code authorizes the City to reimburse a developer for one hundred percent (100%) of the cost of installing water lines within a subdivision, provided the developer guarantees that eighty percent (80%) of the projected revenue from the annual water rates paid by customers connected to such water lines within the subdivision in the first ten (10) years will pay the total cost of the reimbursed amount within the following ten (10) years.

B. Long Meadows, Inc. is the developer of a certain R-3 subdivision known as New Towne Sections 1 - 5 in the City of Lynchburg (the "Subdivision"), more particularly shown and described on those certain plats prepared by Acres of VA, Inc. dated May 5, 2000 and entitled "New Towne Section 5" and copies of which plats are attached hereto as Exhibit A as Section 5 made a part hereof (collectively, the "Plat"). Sections 1, 2 and 3 have been completed and Section 4 will be added at a later time.

C. Long Meadows, Inc. has agreed to (i) make and install certain improvements within the subdivision, (ii) impose certain price restrictions on lots within the Subdivision to encourage the development of affordable housing, and (iii) grant the City a lien on certain lots within the Subdivision, in order to insure Long Meadows, Inc. obligations under this Agreement.

D. The City is willing to provide reimbursements to Long Meadows, Inc. for the construction of water lines and certain other improvements within the Subdivision, provided Long Meadows, Inc. complies with the terms of this Agreement.

Agreement

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Long Meadows, Inc. and the City hereby agree as follows:

1. Term. This Agreement shall commence on the Effective Date and terminate when the Repayment Obligation, as hereinafter defined, has been satisfied in full.
2. Representations and Covenants. Long, Meadows, Inc. represents and covenants that:
 - (a) Finished Home sale price will be \$80,000 and up. Efforts will be made to provide a variety of home styles and exterior finishes within the development to the extent enforceable by the developer.
 - (b) Underground utilities will be installed within the Subdivision.
 - (c) Each home will have a paved, surface treated or concrete driveway.
 - (d) Each lot will have appropriate landscaping to enhance the neighborhood.
 - (e) A Home Owners Association will be established to enforce deed restrictions.
 - (f) Sidewalk will be installed along one side of New Towne Road up to Towne Crier Drive and on Towne Crier Drive to Lot 8, Section 5 at a cost share with the City of 50%.
 - (g) Easements for new public hiking/biking trails will be granted to the City along Blackwater and Tomahawk Creeks.
 - (h) A collector street pavement design will be incorporated on Town Crier Drive consisting of 4" of BM-2 asphalt. Cost of BM-2 to be 100% reimbursed by the City.

(i) All reimbursement cost, excluding the \$ 38.00 /l.f. for the waterline, are to be based on, not to exceed 2002 City Annual Contract prices. Actual construction invoices are to be submitted to the City for determination of reimbursement cost. Payment to be made upon testing and approval of City Inspector.

(j) Decorative street lighting will be installed throughout the subdivision.

(k) Long Meadows, Inc. shall fully develop the Subdivision in substantial conformance with the Plat, the Plans and applicable Federal, State and local laws, rules, regulations and ordinances.

(l) Eighty (80%) of the projected revenue, as set forth on Exhibit B, from the annual water rates paid by customers connected to the water lines in the Subdivision (the "Water Rates") in the first ten (10) years following the Effective Date shall pay the cost of the Water Line Reimbursement, as hereinafter defined, within the following ten (10) years, if not sooner as provided herein. In the event that such Water Rates are insufficient to pay the cost of the Water Line Reimbursement within such time period, then Long Meadows, Inc. shall be responsible for the difference.

(m) Long Meadows, Inc. shall provide the City with such assurances and documentation as the City may request from time to time hereafter to confirm the accuracy of the representations and covenants contained in this Section.

3. Reimbursements to Long Meadows, Inc. provided there is no outstanding default (or events which, with notice or lapse of time or both, would constitute a default) by Long Meadows, Inc. hereunder, the City shall reimburse Long Meadows, Inc. for the following:

(a) The installation costs of the public water lines serving the Subdivision, which costs have been determined to be \$24,168.00 by calculating the water line costs per drawings approved for construction by the City at \$ 38.00 per linear foot for eight inch (8") pipe. Upon completion of waterline, calculations will be checked and if necessary, an adjustment will be made to the final reimbursement amount.

4. Repayment Obligation. For purposes of this Agreement, the phrase "Repayment Obligation" shall mean the cost of the Water Line Reimbursement. The parties have projected that the connection and build-out of eighteen (18) homes in the Subdivision during the first ten (10) years following the Effective Date will yield Water Rates sufficient to satisfy the Repayment Obligation within the following ten (10) years. These projections are set forth on Exhibit B. In the event that revenues from the Water Rates satisfy the Repayment Obligation sooner than the date set forth in the attached projections (e.g., if the actual revenues are higher than the projected revenues, or if build-out occurs more quickly than projected), the Repayment Obligation shall be deemed satisfied on such date. From time to time following the date of dedication of all of the water lines within the Subdivision to the City, Long Meadows, Inc. may examine the actual Water Rates to determine whether the Repayment Obligation is being, or has been, satisfied sooner than projected on Exhibit B, and, if so, Long Meadows, Inc. may request, by notice, that the City adjust the amount of the Repayment Obligation secured by the Deed of Trust, as hereinafter defined, accordingly. The City shall take all reasonable steps to respond to any such notice in a timely manner.

5. Security; Enforcement.

- (a) The Repayment Obligation shall be secured by a first priority deed of trust substantially in the form of Exhibit C (Lot 9) attached hereto and made a part hereof (the "Deed of Trust").
- (b) The Deed of Trust shall encumber a sufficient number of the unsold lots within the Subdivision to provide collateral in the amount of 100% of the Repayment Obligation. The lots shall be valued at the price at which they are listed for sale. However, lots encumbered by the Deed of Trust may be released from the lien of the Deed of Trust, on a lot by lot basis, as and when they are sold to third parties, so long as additional lots are first added to the collateral to maintain the above-referenced 100% requirement and encumbered by supplementary Deed of Trust. The Deed of Trust, and any supplements or modifications thereto, shall not be released unless and until the Repayment Obligation has been deemed satisfied in full by the City.
- (c) In the event that the Repayment Obligation is not satisfied when due, the

City may take such actions as may be available to it under this Agreement, the Deed of Trust, at law or in equity.

6. Default. In the event that either party breaches any of the terms of this Agreement, the non-breaching party may, at any time thereafter, give written notice of the breach to the breaching party and demand that the same be cured. In the event that such breach is not cured within ten (10) days after the breaching party's receipt of such notice, the breaching party shall be deemed to be in default hereunder and the non-breaching party may terminate this Agreement and/or pursue any remedies it may have hereunder, at law or in equity; provided, however, such ten (10) day cure period shall be extended in the event that (i) cure cannot reasonably be completed within such period, (ii) cure is commenced within such period, and (iii) the party undertaking cure is actively and continuously pursuing a course of action which will lead to a cure of the circumstances creating the default within a reasonable period of time. In the event of a default by Long Meadows, Inc., the City shall have the right, in addition to the rights set forth above, to demand immediate satisfaction of the Repayment Obligation.

7. Sewer and Water Availability and Connection Fees. The sewer and water availability and connection fees for each lot within the Subdivision shall be charged at the reduced rate applicable to lots with developer installed water and sewer lines, to the extent applicable.

8. Assignment or Transfer. Long Meadows, Inc. shall not assign or transfer its interest in the Subdivision, or any portion thereof, except to bona fide purchasers of individual lots within the Subdivision, without the prior written consent of the City. Such consent shall not be unreasonably withheld in the event that such assignee or transferee agrees to assume all of Long Meadows, Inc. obligations hereunder in a manner satisfactory to the City.

9. Notices. Whenever notice is required or permitted hereunder from one party to the other, it shall be given in writing and shall be (i) hand delivered, effective the next business day, (ii) sent by overnight courier service, effective upon receipt, (iii) sent by certified mail, postage prepaid, return receipt requested, effective three (3) business days following mailing and addressed as follows:

To the City: Director of Engineering
P.O. Box 60
City Hall

To Long Meadows, Inc.: Howard E. Mowry, Jr. Its President
P.O. Box 4338, Lynchburg, Virginia, 24502

or to such other persons or addresses as may hereafter be designated by notice given pursuant to this paragraph, in writing by one party to the other.

10. Entire Agreement. This Agreement and the exhibits hereto constitute the entire agreement between the parties with respect to the subject matter hereof and supercedes all prior agreements and understandings, both written and oral, between the parties with respect to this subject matter contained in this Agreement.

11. Amendments and Waiver. This Agreement may not be amended except in writing signed by both parties nor shall observance of any term of this Agreement be waived except with the written consent of the party against whom enforcement is sought.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same agreement.

13. Severability. All provisions contained in this Agreement are severable and the invalidity or unenforceability of any provision shall not affect or impair the validity or enforceability of the remaining provisions of this Agreement.

14. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

15. Headings. The descriptive headings of the paragraphs and sections of this Agreement are inserted for convenience only and do not constitute part of this Agreement.

16. Governing Law. This Agreement is made and intended to be performed in the Commonwealth of Virginia and shall be construed and enforced according to the laws of that state.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or officials, pursuant to due authority.

Long Meadows, Inc. a Virginia Corporation

By: _____

CITY OF LYNCHBURG, a Virginia municipal corporation

By: _____

City Manager

REVENUE PROJECTIONS FOR:
New Towne Sec 5 (18 Lots)

I. TWENTY YEAR PROJECTED REVENUE FROM BUILD OUT OF:
18 HOMES DURING FIRST 10 YEARS

Assumptions:

- 1) Average consumption per home 9 hcf
- 2) Average yearly consumption per home 108 hcf
- 3) Water rate increases of ____ per year 4%
- 4) Revenue % used to retire cost 80%

FY	No. Yr.	Rate	Connects (1)	Annual Consump	Annual Revenue	Cumil Revenue
2003	1	1.67	6	648	\$ 1,082	\$ 1,082
2004	2	1.74	11	1188	\$ 2,063	\$ 3,145
2005	3	1.81	16	1728	\$ 3,121	\$ 6,267
2006	4	1.88	18	1944	\$ 3,652	\$ 9,919
2007	5	1.95	18	1944	\$ 3,798	\$ 13,716
2008	6	2.03	18	1944	\$ 3,950	\$ 17,666
2009	7	2.11	18	1944	\$ 4,108	\$ 21,774
2010	8	2.20	18	1944	\$ 4,272	\$ 26,046
2011	9	2.29	18	1944	\$ 4,443	\$ 30,489
2012	10	2.38	18	1944	\$ 4,621	\$ 35,110
2013	11	2.47	18	1944	\$ 4,806	\$ 39,916
2014	12	2.57	18	1944	\$ 4,998	\$ 44,913
2015	13	2.67	18	1944	\$ 5,198	\$ 50,111
2016	14	2.78	18	1944	\$ 5,406	\$ 55,517
2017	15	2.89	18	1944	\$ 5,622	\$ 61,139
2018	16	3.01	18	1944	\$ 5,847	\$ 66,985
2019	17	3.13	18	1944	\$ 6,081	\$ 73,066
2020	18	3.25	18	1944	\$ 6,324	\$ 79,390
2021	19	3.38	18	1944	\$ 6,577	\$ 85,967
2022	20	3.52	18	1944	\$ 6,840	\$ 92,806
					80%	\$ 74,245

80% Average Annual Revenue per Home for 20 years = \$ 4,125

(1) Number of homes connected at beginning of the Fiscal Year shown

II. ANALYSIS

- a. Waterline reimbursement required = \$ 24,168
- b. 80% projected revenue from 18 homes. Use as lien amount = \$ 24,168
- c. 80% avg. revenue anticipated per home for 20 years = \$ 4,125
- d. Revenue requirement will be considered complete if 10 year projection shows that all homes or equivalents are connected to the waterline.
- e. Loss of revenue for each home less than the total not constructed during the first 10 years equals 80% average annual revenue.
- f. Developer to reimburse City 80% average revenue loss for each home less total not constructed after 20 year period or 80% average annual revenue per home.
- g. Developer may request analysis based on actual development schedule for 10 year period if development occurs sooner than this analysis.
- h. Projected rates and average consumption remains constant in any future analysis.
- i. Number of lots requiring liens equals reimbursement divided by the average selling price of lots.

III. SELLING PRICE OF LOTS

a. Assumption CPI = 3% per year

Year	Selling Price	
1	\$	25,000
2	\$	25,750
3	\$	26,523
4	\$	27,318
5	\$	28,138
	\$	26,546

Average 5 year selling price = 26,546

b. Number of lots requiring liens equals reimbursement divided by the average selling price of lots: = 1

c. Developer may substitute cash payment, bond or other terms of security to the City Attorney.

d. Liens may be removed upon documentation that the projections have been met and approved by the director of Public Works.

Exhibit C

Y / COUNTY OF
N AND FOR THE CITY / COUNTY AND
ONE NAMED ARE EDWARD HENETO

P.C. 6 SLIDE 74

RECORD NORTH

CONCLUSIONS

WILLSTONE
ROAD

NOT TO SCALE

LEUNG, A.

subjected out 11th m.

THIS PROPERTY WAS CONVEYED
A VIRGINIA CORPORATION,
AND RECORDED IN OFFICE BOOK
517 OF THE CIRCUIT CO.

HAWKE DRIVE

LOT 45, SECTION 1
DAG WILADOWS, INC.
DB 1130 P. 656
(255-8-46)

LOT 12, SECTION 3
WILLIAM & LISA
ORINKARD
INSTR. NO. 010006012
(2785-11-12)

LOT 13, SECTION
CHRISTOPHER & WIL
COOPER
INSTRUMENT ROOM
(225-11-13)

LOT 14, SECTION 3
CHRISTOPHER & MELISSA
COOPER
INST. NO. 010004507
(226-TI-44)

INC.
I DON'T DO PLAT
ANY ENVIRONMENTALLY
SIC OF THIS PROPERTY.
IT IS A TITLE
I INDICATE ALL
PROPERTY. ALL

3. PROPERTY.
RENEW POWER
BY OVERGROUND

ALL WITHIN THE 100 YEAR
AND BACK ON THEIR
NOVEMBER 10, 1983

WIDE NOTES.

MONTHS FROM DATE
THE CURRENT YEAR
RECORDED IN FILE

PARAMS IN THE
FOR THE COMPUTATION

ROCKCASTLE PARTNERS
DB 714 P. 88
(238-2-1)

IS: BULKHEAD OWNER—
PASADENA CITY OF
LYNDEN

EXISTING IN BASTARD
DOWN ELEMENT
CITY OF LINCOLN

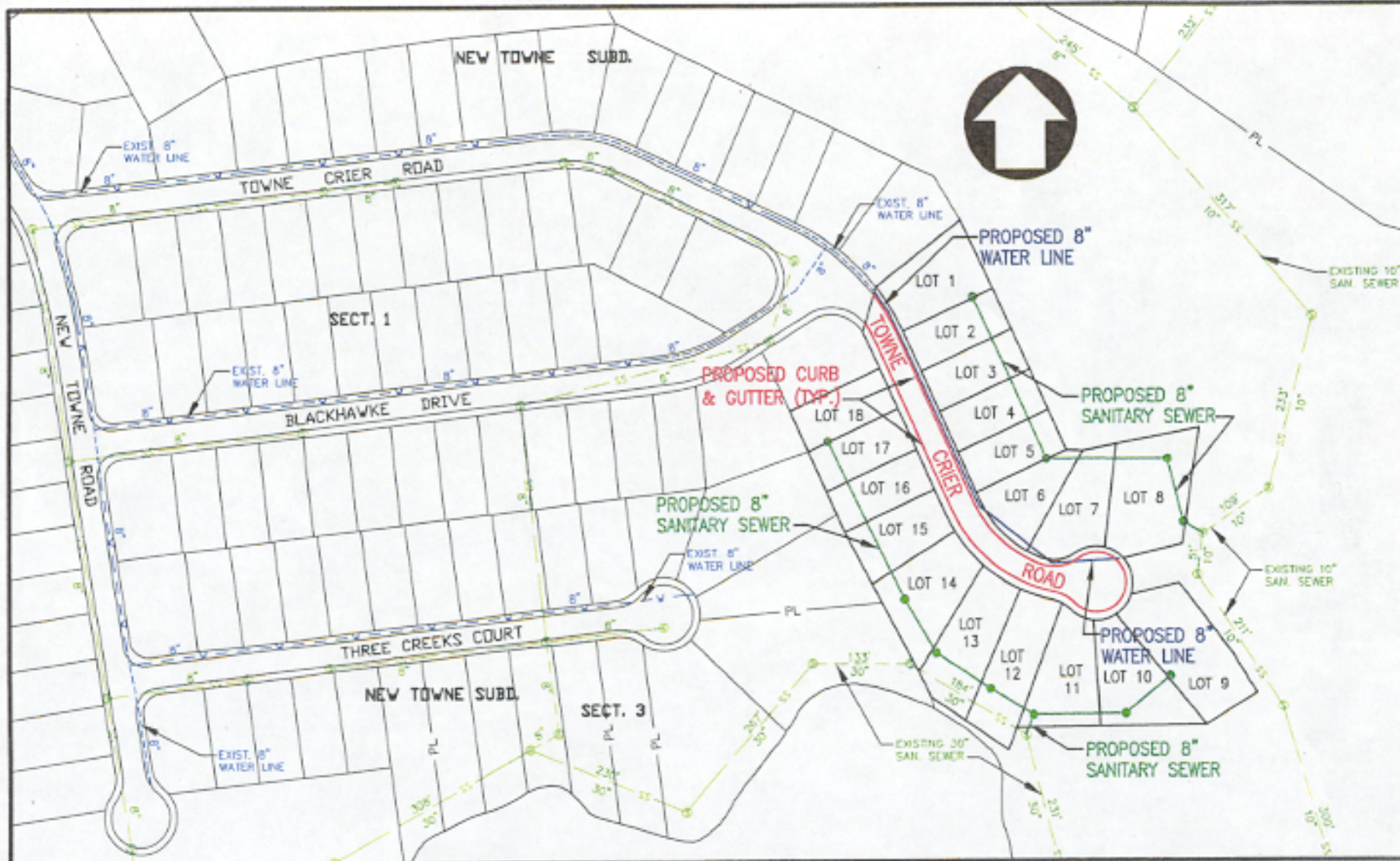
APPROXIMATE LIMITS OF
100 YEAR FLOOD ZONE, AS
SHOWN ON F. P. M. R. MAP.

BLACKWATER CREEK


EXISTING 65' SANITARY
SEWER EXISTENT
CITY OF PHOENIX

THIS PLAY
FROM AN
MY SUPPLY
WINDHAM
SURRENDER
OF WHICH
LAND CLIM
DOES LONGER
THE FIRST

TOTAL P. 01



NEW TOWNE SUBDIVISION SEC.5
PROPOSED CURB & GUTTER
PROPOSED WATER LINE
PROPOSED SANITARY SEWER
PDC MAP

THE CITY OF LYNCHBURG, VIRGINIA
 **DEPT. OF PUBLIC WORKS**
 ENGINEERING

DESIGNED BY: ACRES	DRAWN BY: WEL	CHECKED BY: MRC
APP'D. BY: D.G.C.	PROJECT NO.: 02094-RWS	
SCALE: N.T.S.	SHEET 1 OF 2	
DATE: 1/24/2003	DWG. NAME: PDC_02094RWS.dwg	

